

STATE OF MAINE
BOARD OF FUNERAL SERVICES

IN RE:

KENNETH KINCER,
FUNERAL PRACTITIONER

AND

AFFORDABLE CREMATION
SOLUTIONS,
FUNERAL ESTABLISHMENT

Cases No. 2021-FUN-17358
2021-FUN-17375 and
2021-FUN-17376

ORDER OF IMMEDIATE
SUSPENSION

On June 14, 2021, the Board of Funeral Services (the "Board") heard the initial presentation of the above-referenced cases filed against the license of the funeral practitioner, Kenneth Kincer ("Mr. Kincer") and against the license of the funeral establishment, Affordable Cremations Solutions ("ACS").

After reviewing the complaint and evidence gathered to date, the Board concludes that Mr. Kincer's continued ability to work as a funeral practitioner and as the licensee in charge for ACS constitutes an immediate jeopardy to the health and safety of members of the public, and that it is necessary to immediately suspend Mr. Kincer's license pending an adjudicatory hearing in order to adequately respond to the risk posed by Mr. Kincer's continued work as a funeral practitioner. Further, ACS's funeral establishment license is partially suspended to discontinue all licensee activity, other than to permit the pickup of human remains that are currently in its possession by other persons or entities. Such suspensions shall continue for the next 30 days, until a formal adjudicatory hearing may be held in these matters.

PRELIMINARY FINDING OF FACTS

Based on the documentation obtained to date, the Board preliminarily finds, for the purposes of this order, as follows:

1. At all times pertinent to this matter, Mr. Kincer has been licensed by the Board as a funeral practitioner, license number PR9967.
2. At all times relevant to this matter, ACS was a licensed funeral establishment with Mr. Kincer listed as the responsible licensee, license number #HO10792.

3. On April 8, 2021, the Board investigator visited ACS. The establishment was locked and there was no answer.
4. On April 15, 2021, the Board investigator met with Mr. Kincer at ACS and learned the following:
 - a. Mr. Kincer told the Board investigator that he had not been and still was not feeling well.
 - b. There were 5 uncremated human remains in temporary storage
 - c. Human remains were in unrefrigerated temporary storage but there was no odor of decay at that time.
5. Separate complaints, docketed as 2021-FUN-17375 and 2021-FUN-17376, were received from two individuals who stated that they had been unable to receive the remains of their loved ones. Both complainants stated they had to contact local police for assistance, and one complainant stated she was concerned that she would ever get her husband's remains. Both indicated that they could not reach Mr. Kincer and ACS to make arrangements.
6. During the time surrounding the death of a loved one, individuals are experiencing grief, stress and loss, making them part of a vulnerable population.
7. On April 30, 2021, a letter was sent to ACS and Mr. Kincer indicating that information had been received that the licensee in charge was not available and that ACS was required to designate an alternative licensee in charge. No response has been received to this letter.
8. On June 8, 2021, the Board investigator returned for a follow up visit to ACS and at that time, there were 12 bodies. Three (3) of the bodies were accepted at ACS in April; several from mid-May, and the following was observed:
 - a. Three of the decedents' uncremated human remains have been at ACS since April; at least 5 bodies have been there since mid-May.
 - b. There was reddish brown fluid on the floor and appeared to flow into the drain.
 - c. The funeral attendant told the Board investigator that one of the decedents was too large to fit in a body bag and was accordingly in an unsealed box.
 - d. The odor of decomposition was very strong but confined to the lower level where the human remains are stored.
 - e. People have expressed distress at the inability to contact a responsible licensee.
9. The mental health of members of the public who have the human remains of loved ones at ACS is in jeopardy in connection with the inability to gain access to such remains, and

especially to the extent that the condition of non-refrigeration and physical decay becomes known to such members of the public. For the family of the person who is not in a sealed container, additional distress will be incurred if the condition of that individual becomes known.

10. If ACS continues to receive human remains of deceased individuals without any responsible licensee, additional harm will be incurred by members of the public.
11. On June 10, 2021, Board investigator returned for another follow up visit to ACS and noted:
 - a. Records were in complete disarray;
 - b. The odor of decomposition was now detected in the upper level (office level) of the structure.
 - c. There were 11 deceased persons' remains in unrefrigerated storage at ACS.
 - d. The funeral attendant brought the Board investigator to the main level and then said he had to wait outside due to the odor. The Board investigator reported acquiring a headache due to the odor within 20 minutes of being inside the establishment.
 - e. The Board investigator also learned that multiple calls have been made by people trying to gain possession of their loved ones' remains, and that some of those individuals were very upset.
12. The Office of Vital Statistics has reported that ACS has sent 2 complete and one incomplete copies of death certificates from April 27 through June 8. There were significantly fewer certificates than decedents' human remains.

GROUND FOR IMPOSING DISCIPLINE UPON MR. KINCER'S LICENSE AND THE
LICENSE OF AFFORDABLE CREMATION SOLUTIONS

The Board concludes for the purposes of this order that the above preliminary findings, if proven by a preponderance of the evidence, would constitute grounds for imposing discipline against ACS's and Mr. Kincer's licenses as follows:

- a. Pursuant to 10 M.R.S. sec. 8003(5-A)(A)(2), for misconduct while engaged in the practice of funeral services; specifically concluding that there is evidence that multiple violations of the laws and regulations of funeral practice are set forth in the complaints captioned above, including but not limited to:
 - i. Failure to notify the Board that the licensee in charge for ACS is unavailable or unable to execute on the responsibilities of the Funeral

Establishment as required by 02-331 C.M.R. ch. 7 sec. 5 of the Board rules;

- ii. Because funeral attendants are not authorized under their licenses to release human remains, Licensee is in violation of 02-331 C.M.R. ch. 7 sec. 5.
 - iii. Failure to supervise the part-time funeral attendant in violation of 02-331 C.M.R., ch. 7 sec. 5.
 - iv. Limiting families from securing human remains in violation of 30 M.R.S. sec. 1455-B(7).
 - v. Office of Vital Statistics records reflect that ACS has only filed 2 complete death certificates and 1 incomplete death certificate from April 27, 2021 through June 8, 2021, therefore the licensee is in violation of 32 M.R.S. sec 1455-B(8).
 - vi. Licensee reportedly sent the wrong body to a different funeral home than was communicated to a consumer, reflecting disrespectful handling of human remains in violation of 32 M.R.S. sec 1455-B(9), 02-311 C.M.R. ch 15, sec. 5 (handling and preparation of human remains) and 02-331 C.M.R. ch. 15, sec. 3 (standard of total honesty).
 - vii. Licensee is not providing personal supervision of this funeral attendants in violation of 02-331 C.M.R. ch. 10, sec. 4(3) (supervision, training, and licensure of Funeral Attendants).
 - viii. Human remains of deceased individuals are being stored in unrefrigerated storage, and one person is not in a body bag, and fluids are leaking onto the floor and down the drain, licensee is in violation of 32 M.R.S. sec 1455-B(9), 02-311 C.M.R. ch 15, sec. 5 (handling and preparation of human remains).
2. The Board finds for the purposes of this Order of Immediate Suspension, the health and physical safety of the public are in immediate jeopardy as a result of Mr. Kincer's actions, and that as a result of his actions his license to practice as a funeral practitioner must be suspended in order to adequately respond to that risk. The license of ACS is also suspended, except that ACS shall remain open so that Board staff may obtain records for all individuals whose human remains or cremains are in custody of ACS and respond to authorized persons seeking possession of human remains of deceased individuals that are still located at ACS. The Board makes the conclusion on the following bases:
- a. The above violations affect a vulnerable population.
 - b. The above behaviors result in said population being upset and distressed, putting into immediate jeopardy their health, physical and mental.

- c. The above violations create an untenable workplace and provoke physical and emotional reactions of Funeral Attendants and anyone in that environment.

ORDER OF IMMEDIATE SUSPENSION

This suspension is issued pursuant to 5 M.R.S. § 10004(3). **Mr. Kincer and ACS's licenses are suspended effective 9 a.m. on June 14, 2021, for the 30-day period ending on July 14, 2021, at 8:59 a.m.,** pending further board action at an adjudicatory hearing and subject to the terms and conditions as stated below. The Board orders that an adjudicatory hearing be scheduled within 30 days of the suspension, which hearing is scheduled for **July 13, 2021 at 9:00 a.m.**

During the licensure suspension, Mr. Kincer may not practice any aspect of funeral service, including without limitation accepting new deceased people's human remains, forwarding any deceased people's human remains to a crematorium, holding any funeral service, or any other activity of a funeral practitioner.

During the period of licensure suspension, Affordable Cremation Services may not perform any services of a funeral establishment **except that** it shall remain open to permit Board staff to obtain all records for any human remains and cremains of people in ACS's custody. ACS shall also remain open for the purpose of allowing pick up by authorized persons of all human remains or human cremains of people in ACS's custody.

Dated: June 14, 2021



Chad Poitras, Chair
Board of Funeral Services